79-1904

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. A-949

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, NINTH CIRCUIT

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STATE OF ALASKA,
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, NINTH CIRCUIT

Petitioner, Kenai Peninsula Borough, plaintiff-appellant below, petitions this court for a WRIT OF CERTIORARI directed to the United States Court of Appeals for the Ninth Circuit. In support of its petition, petitioner alleges:

I.

Reference To The Official And Unofficial Reports Of The Opinions Delivered In The Courts Below:

1. *Kenai Peninsula Borough* v. *Andrus*, 436 F. Supp. 288 (D. Alaska 1977). A copy of that opinion is appended to this petition as Appendix A.

2. *Kenai Peninsula Borough* v. *Alaska*, 611 F. 2d 1210 (9th Cir. 1980). A copy of that opinion is appended to this petition as Appendix B. A copy of the judgment of the Court of Appeals is appended to this petition as Appendix C.

II.

The Grounds On Which The Jurisdiction Of This Court Is Invoked:

1. The judgment of the United States Court of Appeals for the Ninth Circuit was entered February 5, 1980.

2. There has been no order respecting a re-hearing; an order dated May 7, 1980 granted an extension of time to and including June 2, 1980 within which to petition for certiorari.

3. This court has jurisdiction to review the judgment entered by the United States Court of Appeals for the Ninth Circuit under 28 U.S.C. § 1254(1).

III.

Questions Presented For Review.

1. Did the United States Court of Appeals for the Ninth Circuit commit error by affirming the judgment of the United States District Court for the District of Alaska, which judgment ordered that all revenue derived from federal oil and gas leases located within the Kenai National Moose Range, Alaska be distributed to the United States and State of Alaska pursuant to 30 U.S.C. § 181 et seq., the Mineral Leasing Act?

2. Did the United States Court of Appeals for the Ninth Circuit commit error in affirming the judgment of the United States District Court for the District of Alaska, which judgment declared that subsequent to its amendment in 1964, the distribution of revenue from federal oil and gas leases located within the Kenai National Moose Range, Alaska was not governed by the Act of June 15, 1935, as amended, (Wildlife Refuge Revenue Sharing Act), 16 U.S.C. § 715s, but rather by 30 U.S.C. § 181 et seq., the Mineral Leasing Act?

IV.

Citations To The "Statute" Involved In This Case (The Complete Text Of The Statutes Appears In Appendix D).

1. 30 U.S.C. § 181, 191 found at pages 6-7 and 55-56, respectively Title 30 United States Code annotated and at page 18 of the 1980 Supplement thereto (1976 amendments to Section 191).

2. 16 U.S.C. § 715s found at pages 463-465 30 United States Code annotated, and at pages 106-108 of the 1980 Supplement thereto (1974 and 1978 amendments).

V.

Statement Of The Case Containing The Facts Material To The Consideration Of The Questions Presented.

a. ***Nature Of The Case, And Course Of Proceedings In The Courts Below.***

This case involves separate suits by the Kenai Peninsula Borough, an Alaska county type municipal corporation, (hereinafter called "Borough") and the State of Alaska (hereinafter called "State") for declaratory relief and writs of mandate (R-1-25).[1] The Borough sought a declaratory judgment that revenue from federal oil and gas leases located within the Kenai National Moose Range, Alaska[2] be distributed pursuant to 16 U.S.C.

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[1] References to the record are to the record filed in the Court of Appeals of the Ninth Circuit.

[2] The Kenai National Moose Range is part of the National Wildlife Refuge System and is located wholly within the Kenai Peninsula Borough. It was established on December 16, 1941, Executive Order 8979, 6 Fed. Reg. 6471 (R. 906). That order withdrew and reserved approximately 2 million acres of primarily public land for "use as a refuge and breeding ground for moose."

§ 715s (R. 14-25). Under that section the Borough would receive twenty-five percent (25%) of such net revenue; the remaining seventy-five percent (75%) would be paid to the United States Treasury to be expended for the management of the National Wildlife Refuge System.

The State sought a declaratory judgment that revenue from federal oil and gas leases located within the Kenai National Moose Range, Alaska be distributed pursuant to 30 U.S.C. § 181, et seq., the Mineral Leasing Act (R. 1-9). Under that Act ninety percent (90%) of the revenue would be distributed to the State and ten percent (10%) to the United States. Both the Borough and the State sought Writs of Mandate compelling the appropriate federal officials to distribute the revenue in a manner consistent with their respective claims.

In each suit the Secretary of the Interior sought a judgment declaring that the proceeds of federal oil and gas leases situated on the Kenai National Moose Range be distributed pursuant to 16 U.S.C. § 715s (R. 294).

The separate actions brought by the State and the Borough were consolidated on August 12, 1976 (R. 27-28). After consolidation and on December 10, 1976 the Kenai Peninsula Borough intervened in the State suit and sought the same relief demanded in its original suit (R. 39-52).

Since there were no genuine issues of material fact, all of the parties, the State, Borough and Federal defendants filed motions for partial summary judgment. All the parties' motions for summary judgment were argued orally before the United States District Court on July 7, 1977. Thereafter, that court granted the State's motion for partial summary judgment and denied the motions by the Borough and the United States. Judgment was entered on its order on October 10, 1977.

By its terms the District Court judgment ordered that all revenue derived from all federal oil and gas leases located within the Kenai National Moose Range, Alaska be distributed to the United States and State of Alaska under 30 U.S.C. § 181, et seq.

Both the Borough and the Federal defendants appealed from the judgment of the District Court. By its decision filed February 5, 1980, a copy of which is appended hereto in Appendix B, the United States Court of Appeals, for the Ninth Circuit, affirmed the decision of the District Court for the District of Alaska.

b. *Statement Of Facts Relevant To The Issues Presented For Review.*

The genesis of this dispute is Congress' enactment on August 30, 1964 of Public Law 88-523, 78 Stat. 701-702. That Statute was a complete revision of 16 U.S.C. § 715s, the Wildlife Refuge Revenue Sharing Act. As first enacted on June 15, 1935, 49 Stat. 383, the Wildlife Refuge Revenue Sharing Act distributed twenty-five percent (25%) of the net revenue from Wildlife Refuges to the county in which the refuge was located. The United States retained the remaining proceeds. However, proceeds from the sale of minerals were not specified for distribution to counties by the statute as initially enacted. The 1964 amendment added the word "mineral" to the list of resources the revenue from which was to be distributed to counties under the act. In addition the 1964 amendment to 16 U.S.C. § 715s specifically requires that twenty-five percent (25%) of the net revenue from reserved public land in the Wildlife Refuge System (including of course minerals) be distributed to the county in which the refuge is located.[3] Seventy-five per-

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[3] Before the 1964 amendment to 16 U.S.C. § 715s, mineral receipts from reserved land wildlife refuges were distributed to pursuant to 31 U.S.C. § 181 et. seq., the Mineral Leasing

cent (75%) of the revenue is to be paid to the Fish & Wildlife fund.

Because of the inconsistency between the revenue distribution provisions of 16 U.S.C. § 715s as amended, on one hand, and the earlier enacted provisions of 31 U.S.C. § 181 et seq., on the other, the Director of the Fish & Wildlife Service sought an opinion from the Solicitor of the Department of the Interior as to what statute governed the distribution of revenue from oil and gas leases on reserved land Wildlife Refuges including, necessarily, the Kenai National Moose Range (R. 179). The Solicitor concluded that 16 U.S.C. § 715s as amended in 1964 governed the distribution of that revenue (R. 179). The Comptroller General concurred in the Solicitor's opinion, Decision B-118678 of July 29, 1975, 55 Comp. Gen. 117 (R. 185). In response to a request by the State of Alaska for reconsideration (R. 190), the Solicitor affirmed his earlier decision on July 11, 1976 (R. 211). In order to compel distribution of revenue derived from federal oil and gas leases situated on the Kenai National Moose Range in accordance with the opinions of the Solicitor of the Department of the Interior and the Comptroller General noted above, the Kenai Peninsula Borough filed suit on May 14, 1976 (R. 14).

c. *Basis For Initial Federal Jurisdiction.*

The basis for federal jurisdiction in the first instance was 28 U.S.C. § 1331, federal question jurisdiction.

Act. The Kenai National Moose Range is a reserved land wildlife refuge. Revenue from the Kenai National Moose Range was accordingly distributed in the manner required by the Mineral Leasing Act (R. 66-67; 299-230).

VI.

Statement Of Reasons Relied On For This Petition.

This petition for Writ of Certiorari should be granted pursuant to Supreme Court Rule 19(b). Both the District Court and the Court of Appeals for the Ninth Circuit have decided an important question of federal law which has not been, but should be settled by the Supreme Court, Supreme Court Rule 19(b)(1).

There is an irreconcilable conflict between the provisions of 16 U.S.C. § 715s, as amended in 1964, the Wildlife Refuge Revenue Sharing Act, and the earlier enacted provisions of 31 U.S.C. § 181 et seq., the Mineral Leasing Act. The Mineral Leasing Act would require ninety percent (90%) of the oil and gas revenues from federal oil and gas leases located on the Kenai National Moose Range to be distributed to Alaska and ten percent (10%) thereof to the United States. On the other hand, the Wildlife Refuge Revenue Sharing Act requires twenty-five percent (25%) of those revenues to be distributed to those counties which the Wildlife Refuge is located and seventy-five percent (75%) thereof to the United States Fish and Wildlife Fund. The conflict should be resolved by this court.

There are at least three reasons why this question is of significant importance. First, and most readily apparent, there are significant amounts of revenue at stake. During the period from 1966 to 1976 the total revenue from federal leases on the Kenai National Moose Range was over Fifty Seven Million Dollars (R. 949). Since 1976 additional millions of dollars are being held in a suspense account (R. 231, 1133). Accordingly, the effect of this litigation on all parties is substantial. Moreover, the result as to each party is widely different depending on the statute applied. For example, the Kenai Peninsula Borough can receive either nothing or up to approxi-

mately 12 million dollars, depending on the outcome. Likewise the Fish & Wildlife Fund can receive either nothing or up to 48 million dollars.

A second reason why this question should be resolved by this court is based on the fact that Wildlife Refuges other than the Kenai National Moose Range will be affected by the outcome of this suit. In Alaska alone there are at least ten other National Wildlife Refuges, some of which will have significant mineral revenue potential.[4] Because of the national need to develop energy sources, and because most of those presently undeveloped sources lie within Alaska, the conclusion is inescapable that other wildlife refuges will be affected. For example, the Arctic National Wildlife Refuge abuts the Arctic Ocean and is immediately adjacent to the highly productive Prudhoe Bay oilfields. The question presented by this litigation is not an isolated one but can and will occur frequently in the future.

Third, apart from the need to resolve the irreconcilable conflict between the two statutes involved, this suit raises important questions of statutory interpretation. The necessity for resolving these questions is demonstrated by the fact that each Court below decided this case upon what the Borough considers to be erroneous theories of statutory interpretation.[5] This court should

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[4] Arctic National Wildlife Refuge; Yukon National Wildlife Refuge; Chamisso National Wildlife Refuge, Clarence Rhode National Wildlife Refuge; Nunivak National Wildlife Refuge; Nelson Island National Wildlife Refuge; Kodiak Island National Wildlife Refuge; Aleutian Island National Wildlife Refuge; Yukon Delta National Wildlife Refuge; Koyukuk National Wildlife Refuge.

[5] The District Court recognized that the wording of 16 U.S.C. § 715s would support a liberal construction of the word "minerals". Nevertheless that court concluded that despite the literal requirements of the Statute, it did not

clarify the law relating to the principles of statutory interpretation involved. Specifically even though each court below recognized that the applicable provisions of 16 U.S.C. § 715s has had a plain unambiguous meaning,[6] each court resorted to legislative history to achieve a meaning contrary to that plain meaning. Each Court concluded such an interpretation was necessary because Congress could not have contemplated the result obtained by the literal reading of the statute. The principle involved was correctly applied by the U.S. Court of Customs and Patent Appeals in *Sears, Roebuck & Co.* v. *U.S.*, 504 F. 2d 1400 (1974) where the court said:

> "If Congress had made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators (504 F. 2d at P. 1402)."

On the other hand, the Court of Appeals in this case said:

> "Since a literal reading of § 715s creates apparently unanticipated and non-productive difficulties with other statutes and the legislative history of the statute does not resolve the issue, it is nearly impossible to determine with confidence what was Congress' intent in passing the 1964 amendments." (612 F. 2d. 1210, 1213-1214 [1980]).

With respect to the interpretation of a statute whose meaning is clear on its face, but which has been interpreted by the courts below in a manner contrary to its

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require distribution of mineral receipts from reserved land and wildlife refuges in accordance with its terms, 136 F. Sup., 288, 291, (R. 1070). The Court of Appeals agreed, 611 F. 2d 1210, 1213 (1980).

[6] The plain meaning of the statute requires distribution of twenty-five percent (25%) of reserved land wildlife refuge receipts to the count, in which the refuge is located.

plain meaning, it is necessary that this Court establish the principles governing the statute's application.

In conclusion, this case raises important questions of federal law both with respect to issues of importance in the administration of the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, cf. *U.S.* v. *An Article of Drug et. al.*, 394 U.S. 784 (1969) and with respect to matters of statutory interpretation, cf. *Egan* v. *City of Aurora, Ill.*, 365 U.S. 514 (1961).

On the basis of the foregoing it is respectfully requested that the Court issue a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in this suit.

Respectfully submitted this 2nd day of June, 1980.

CRANSTON, WALTERS, DAHL & JARRELL
Attorneys for Kenai Peninsula Borough

By: Charles Cranston
CHARLES CRANSTON

Appendices

APPENDIX A

UNITED STATES DISTRICT COURT

D. ALASKA

Civ. Nos. A76-94 & J76-3

KENAI PENINSULA BOROUGH,
Plaintiff,

v.

CECIL D. ANDRUS,
Defendant.

STATE OF ALASKA,
Plaintiff,

v.

CECIL D. ANDRUS, *et al.*,
Defendants.

Aug. 17, 1977

Charles K. Cranston, Gallagher, Cranston & Snow, Anchorage, Alaska, for Kenai Borough.

Avrum Gross, Atty. Gen., State of Alaska by Frederick Boness, Asst. Atty. Gen., Juneau, Alaska, for plaintiff.

G. Kent Edwards, U.S. Atty., Anchorage, Alaska, for defendant.

MEMORANDUM AND ORDER

VON DER HEYDT, Chief Judge.

THIS CAUSE comes before the court on cross motions for summary judgment. The precise issue before the court is whether the distribution of revenues from mineral leases within the Kenai National Moose Range

is governed by the Mineral Leasing Act, 30 U.S.C. § 191, or 16 U.S.C. § 715s.

The Kenai National Moose Range was created by the reservation of land in the public domain.[1] From statehood until the events leading to this lawsuit the State of Alaska received mineral leasing revenues from the Kenai National Moose Range, pursuant to 30 U.S.C. § 191. Under that statute the State received 90% of the lease revenues, with the remaining 10% accruing to the United States as miscellaneous receipts. On July 29, 1975, the Comptroller General issued an opinion stating that mineral leasing receipts from wildlife refuges created by reservation, as well as receipts from wildlife refuges created by acquisition, were governed by the distribution scheme of 16 U.S.C. § 715s. The Comptroller General determined that 16 U.S.C. § 715s, as amended in 1964, required distribution of 25% of the net receipts from mineral leases on reserved refuges to the counties in which the refuge was located, with the remaining 75% distributed to the wildlife refuge fund. The State of Alaska objected to the Comptroller General's opinion, and upon reconsideration the original position was affirmed by the Comptroller General in an opinion issued on June 11, 1976.

On May 14, 1976, Kenai Peninsula Borough, the borough in which Kenai National Moose Range is located, filed suit against the Secretary of Interior seeking distribution of mineral leasing receipts in conformity with 16 U.S.C. § 715s. On July 8, 1976, the State of Alaska filed suit against the United States seeking distribution as provided by 30 U.S.C. § 191. The actions

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[1] In general, reserved lands are lands which were never in state or private ownership while acquired lands are those granted or sold to the United States by a state or citizen. *Wallis* v. *Pan American Pet. Corp.*, 384 U.S. 63, 65 n.2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966).

puted, and the controversy is purely one of statutory interpretation.

Before proceeding with the disposition of the motions it is necessary to outline the interplay of the statutes involved in this suit. As noted above, the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181, 191, requires the United States to distribute 90% of mineral leasing receipts from public domain lands to the states. *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63, 65 n. 2, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966). Revenues from mineral leases on acquired lands of the United States are distributed under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, which requires mineral lease receipts to

> "be paid into the same funds or accounts in the Treasury and . . . distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355.

Prior to the 1964 amendment, 16 U.S.C. § 715s, at least as interpreted by the State of Alaska and the Comptroller General, did not apply to mineral lease receipts on reserved public lands.[2] However, all non-mineral activity receipts from refuges were distributed under 16 U.S.C. § 715s. In summary, prior to 1964, receipts from

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[2] Prior to 1964, 16 U.S.C. § 715s(a) provided that 25% of money received by the United States "from the sale or other disposition of surplus wildlife, or sale of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gavel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, . . . shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, . . ."

activities on wildlife refuges were distributed in the following manner:

1. All non-mineral activity receipts were distributed 25% to the counties and 75% to a federal wildlife refuge fund;

2. Mineral leasing receipts from reserved lands were distributed 90% to the State of Alaska and 10% to a federal fund for miscellaneous receipts;

3. Mineral leasing receipts from acquired lands were distributed like refuge receipts from non-mineral activity —25% to the counties and 75% to the wildlife refuge fund.

In 1964, 16 U.S.C. § 715s(a) was amended to read:

> Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, *minerals*, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. (emphasis added).

At the same time, the distribution scheme was changed to differentiate between receipts from reserved lands and receipts from acquired lands. 16 U.S.C. §§ 715s(c)(1) and 715s(c)(2). The position of the United States and

Kenai Peninsula Borough is that 16 U.S.C. §§ 715s(a), 714s(c)(i), as amended, requires that 25% of the mineral leasing receipts from reserved lands be distributed to Kenai Peninsula Borough. In contrast, the State of Alaska would have this court interpret the word "minerals" restrictively to apply only to acquired lands so that mineral leasing receipts from a wildlife reserve created by withdrawal of land from the public domain would be distributed 90% to the State of Alaska and 10% to the miscellaneous fund.

The Kenai Peninsula Borough argues that prior to 1964 16 U.S.C. § 715s governed the distribution of mineral leasing receipts from public land. Specifically, Kenai Peninsula Borough argues that the language "other privileges" was intended to include mineral leasing receipts from reserved and acquired land. This interpretation ignores the fact that mineral leasing receipts from reserved land within wildlife refuges generated prior to 1964 were in fact distributed under 30 U.S.C. § 191. Moreover, it ignores the fact that the government continues to adhere to its construction of 16 U.S.C. § 715s as it read prior to amendment.[3] Such a long-standing, contemporaneous, and practical interpretation by the executive officers charged with administration of a statute is strong evidence of the meaning of a statute. *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 116, 67 S.Ct. 1129, 91 L.Ed. 1375 (1947). *See generally*, Sutherland, Statutory

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[3] On June 11, 1976, the Comptroller General held: "The Attorney General states, and we agree, that prior to the 1964 amendment, oil and gas lease revenues were not included in the coverage of 16 U.S.C. § 715s and that to the extent the counties benefited from oil and gas lease revenues from wildlife refuges prior to 1964, it was only with respect to acquired lands, by virtue of 30 U.S.C. § 355, supra." Comptroller General B-118678, at 3 (June 11, 1976). See also Comptroller General B-118678, at 1-2 (June 11, 1976).

Construction § 49.03, at 233 (4th ed. 1972). The borough cites obscure, often ambiguous evidence of a contrary administrative interpretation. The ambiguous material is consistent with the State of Alaska's position, and to the extent that the evidence contradicts the state's interpretation it pales in the face of the actual fact of distribution. Neither the legislative history nor the policy of management of the refuges requires a different result.

Rejection of Kenai Peninsula Borough's interpretation of 16 U.S.C. § 715s(a) as it read prior to the 1964 amendment, of course, is only the beginning of the inquiry. The primary issue is whether 16 U.S.C. § 715s (a), as amended in 1964, should be construed literally or restrictively. The general rule of statutory construction is that there is no occasion for construction where the language is clear and unambiguous and does not lead to absurd or impracticable results. *Caminetti* v. *United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed. 442 (1917). *See generally* Sutherland, Statutory Construction, § 46.01, at 48 (4th ed. 1972). In determining whether a statutory term is clear and unambiguous, the court generally looks to the Act itself to make a prima facie determination. *See Foley Bros.* v. *Filardo*, 336 U.S. 281, 284, 69 S.Ct. 575, 93 L.Ed. 680 (1949). *See generally* Sutherland, Statutory Construction, § 46.05, at 55-56 (4th ed. 1972). In the case at bar, there is nothing in 16 U.S.C. § 715s which would support a restrictive construction of the word "minerals". Thus, a literal approach to statutory construction would dictate an expansive definition including both reserved and acquired lands.

However, there are limits to literalism. All statutes must be interpreted in light of their statutory purpose, and a literal reading which would be contrary to the legislative purpose is to be avoided if the statute can be read in a manner consistent with the words and pur-

pose. *Haggar Co.* v. *Helvering*, 308 U.S. 389, 394, 60 S.Ct. 337, 84 L.Ed. 340 (1940). *See generally* Sutherland, Statutory Construction § 46.07, at 65 (4th ed. 1972). Where a literal interpretation would result in applications beyond the purpose for which the statute was enacted, courts construe the language restrictively in order to give effect to the spirit of the statute. *See generally* Sutherland, Statutory Construction, §§ 54.04, at 358, 54.06, at 368, 46.07, at 66 (4th ed. 1972).

The primary purpose of the 1964 amendment of 16 U.S.C. § 715s was undoubtedly to facilitate the acquisition of waterfowl habitat areas. The Secretary of the Interior was authorized to acquire such land, but only if the governor of the state in which the land was located approved the acquisition. The governors generally refused to approve acquisitions because when land was acquired it was withdrawn from the tax rolls. Local communities were deprived of property tax revenues and would not benefit from the 25% distribution scheme if the land was not producing revenue. Consequently, the distribution scheme for acquired wildlife refuge land, 16 U.S.C. § 715s(c) had to be amended to facilitate acquisition. H.R.Rep.No. 1753, 88th Cong., 2d Sess. 1 (1964); S.Rep.No. 1096, 88th Cong., 2d Sess. 2 (1964), U.S. Code Cong. & Admin.News 1964, p. 3265.

While the purpose of amending 16 U.S.C. § 715s(c) is clear, there is little evidence of the purpose behind adding "minerals" to the product list of 16 U.S.C. § 715s(a). If the court accepts Kenai's view this silence is surprising given the substantial reallocation of revenues which would result if the amendment did effect distributions from reserved lands. If the addition of "minerals" was intended to alter the distribution, one would expect mention of this fact in discussions which focused on 16 U.S.C. § 715s(a), and one would expect vigorous objection from the states. Cf. H.R. Rep.No. 1753, 88th Cong., 2d Sess. 77 (1964), U.S. Code Cong. & Admin.News

1964, p. 3265. More equitable Payments to Counties Having Wildlife Refuges: Hearings on S. 179, S. 1363, S. 1720, and S. 2498 Before Committee on Commerce, 88th Cong., 2d Sess. 77 (1964). Of course, "the search for significance in the silence of Congress is too often the pursuit of a mirage." *Scripps-Howard Radio* v. *Comm'n*, 316 U.S. 4, 11, 62 S.Ct. 875, 880, 86 L.Ed. 1229 (1942). The State of Alaska's restrictive reading, however, is supported by more than the mere silence of Congress. First, if Congress had intended to change the distribution scheme for mineral leasing revenues from reserved lands, the estimated payments to counties after the 1964 amendment would have substantially increased over past payments. However, no increase in payments to Kenai Peninsula Borough was projected in the cost estimate considered by Congress. The 1963 payments from Kenai wildlife refuge receipts were $1,768. The estimated payments in 1963, assuming the 1964 amendment had been in force in 1963, were identical. H.R.Rep. No. 1793, 88th Cong., 2d Sess. 3 (1964); S.Rep.No. 1096, 88th Cong., 2d Sess. 13 (1964).

These estimated distributions were estimates for both acquired and reserved lands. This is evident from the inclusion of payments from the Kenai wildlife refuge in the projections. There is also explicit recognition of this fact in footnote 3 to the cost estimate.

Secondly, Congressional intent is evident in the Congressional expectation that the wildlife refuge fund would decrease if the 1964 amendment was adopted. H.R. Rep.No. 1753, 88th Cong., 2d Sess. 12 (1964). If mineral leasing receipts from public lands were intended to be distributed in conformity with 16 U.S.C. 715s(c)(1), the wildlife refuge fund would have been substantially increased, and not reduced, as 75% of the mineral leasing receipts from reserved lands would have been reallocated to the wildlife refuge fund. Finally, it should be observed that the administrative agency charged with

distribution of the fund distributed mineral lease revenues from public land for more than ten years after amendment as provided by 30 U.S.C. § 191. Only recently has the Secretary taken a contrary position.

Thus, this court concludes that the word "minerals" as used in the 1964 amendment of 16 U.S.C. § 715s(a) must be read restrictively rather than literally. The 1964 amendment of 16 U.S.C. § 715s(a) was not intended to amend 30 U.S.C. § 191 to require distribution of mineral leasing receipts from reserved land in accordance with 16 U.S.C. § 715s(c). To hold otherwise would require an application of literalism in violation of the apparent Congressional purpose. The interpretation adopted does not make "minerals" superfluous as 16 U.S.C. § 715s does continue to govern the distribution of mineral lease receipts from acquired land. Cf. Sutherland, Statutory Construction § 46.06, at 63 (4th ed. 1972). Moreover, this construction is consistent with the rule of construction disfavoring implied amendments. Sutherland, Statutory Construction § 22.13, at 139 (4th ed. 1972).[4]

Accordingly, IT IS ORDERED:

1. THAT the State of Alaska's motion for partial summary judgment is granted;

2. THAT the cross-motions for summary judgment filed by Kenai Peninsula Borough and the United States are denied.

DATED at Anchorage, Alaska, this 17th day of August, 1977.

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[4] Because of this result the court is not required to determine: Whether section 317 of the Federal Land Policy and Management Act, in amending the Mineral Leasing Act of 1920, impliedly amended the 1964 amendment to 16 U.S.C. § 715s. Nor does the court need determine whether the 1964 amendment to 16 U.S.C. § 715s constitutes a breach of compact between the State and the United States.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 77-3265

Civil No. A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
Plaintiff-Cross-Complainant-Appellant,

vs.

STATE OF ALASKA,
Plaintiff-Appellee

and

CECIL D. ANDRUS, Secretary of the Interior, *et al.*,
Defendant-Appellee.

No. 78-1443

Civil No. J-76-3

KENAI PENINSULA BOROUGH, a municipal corporation,
Plaintiff-Cross-Complainant-Appellee,

vs.

STATE OF ALASKA,
Plaintiff,

and

CECIL D. ANDRUS, Secretary of the Interior, *et al.*,
Defendant-Appellant

OPINION

Appeal from the United States District Court
for the District of Alaska

Before: CHAMBERS and TANG, Circuit Judges, and THOMPSON,* District Judge

TANG, Circuit Judge.

These consolidated actions were brought to determine the proper distribution of revenues from federal oil and gas leases on reserved public lands within the Kenai National Moose Range, Alaska, a part of the National Wildlife Refuge System. Appellants herein, Kenai Peninsula Borough (Kenai) and the Secretary of the Interior, Secretary of the Treasury, and the Comptroller General (federal defendants) seek distribution pursuant to the Act of June 15, 1935, as amended, 16 U.S.C. § 715s (1976)[1] (Wildlife Refuge Revenue Sharing Act). The State of Alaska (Alaska) seeks distribution pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 191. The district court, in a decision reported at 436 F.Supp. 288 (D. Alas. 1977), granted summary judgment in favor of Alaska.

We affirm.

FACTUAL AND STATUTORY BACKGROUND

The opinion of the district court should be consulted for a more detailed rendering of the legislative back-

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* Honorable Bruce R. Thompson, United States District Judge for the District of Nevada, sitting by designation.

[1] References to § 715s are to the section as it existed in 1976. In 1978, the section was amended in several respects. The substance of these changes has no impact on the issue in this case; but some of the paragraphing of the section has been altered. *But see* footnote 6 *infra*.

ground. A brief account will suffice here. The Kenai National Moose Range was created in 1941 by the reservation of land in the public domain.[2] The Mineral Leasing Act is the statute governing mineral leases on reserved public lands generally. Under the Act, from 1957 and 1958 until the events leading to this lawsuit, Alaska received 90% of the net revenues from oil and gas leases in the Kenai Range, while the remaining 10% accrued to the U.S. Treasury. 30 U.S.C. § 191.[3]

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s governs the distribution of revenues only from lands in the National Wildlife Refuge System. It provides that revenues from refuge lands go into a separate fund, and that these revenues then be divided between the local county in which the land is situated (25%) and the Wildlife Refuge Fund (75%). Prior to 1964, the distribution schemes of the Mineral Leasing Act and the Wildlife Refuge Revenue Sharing Act were not in conflict because the list of revenue sources in the Wildlife Refuge Revenue Sharing Act did *not* include the sale or other disposition of *minerals* on the refuge lands.

Amendments in 1964, however, made significant alterations in the distribution scheme of 16 U.S.C. § 715s(c)

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[2] Reserved public domain lands are public domain lands, never in state or private ownership, which have been set apart and reserved for a specific purpose. Public lands set apart for wildlife refuges are often described simply as reserved lands. Land in the Wildlife Refuge System may also be acquired. Acquired lands are those granted or sold to the United States by a state or citizen.

[3] The Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359, governs the distribution of revenues from oil and gas leases on acquired lands. It provides that lease revenues "be distributed in the same manner as prescribed for other receipts from the land affected by the lease." *Id.* § 355. Thus, for mineral leases on acquired lands there is no conflict with the Wildlife Refuge Revenue Sharing Act.

and added the word "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a). Although the addition of "minerals" to the Wildlife Refuge Revenue Sharing Act created a *prima facie* conflict between the allocation schemes of the two acts for mineral revenues on reserved refuge land, the legislative history of the amendments shows no awareness of the significance of the change. The legislative history is concerned exclusively with the proposed alterations within the distribution scheme of the Wildlife Refuge Revenue Sharing Act. Moreover, the Interior Department, which is charged with the administration of these provisions, over the years since 1964 until 1975 gave no studied attention to the conflict and continued to distribute the Kenai Refuge oil and gas lease revenues to Alaska according to the Mineral Leasing Act.

In 1975, in response to a request by the Director of the Fish and Wildlife Service, the Solicitor of the Interior Department issued an opinion that the 1964 addition of "minerals" to the Wildlife Refuge Revenue Sharing Act should control the distribution of oil and gas revenues on reserved refuge land, superseding the contrary provisions of the Mineral Leasing Act. The Comptroller General concurred in this conclusion. 55 Comp. Gen. 117. After objection by Alaska and reconsideration by the Solicitor and the Comptroller General, the Comptroller reaffirmed the original conclusion. Thereafter these lawsuits were initiated. All federal distribution of Kenai Moose Range oil and gas revenues ceased at the end of 1976, pending the outcome of this litigation.

ISSUES

Upon appeal, on behalf of Kenai and the federal defendants, it is argued that the addition of the term "minerals" to the list of revenue sources in 16 U.S.C. § 715s(a) and the scheme of distribution contemplated in 16 U.S.C. § 715s(c) are of clear enough application that,

in the absence of an expression of contrary meaning in the legislative history, the statute should be construed literally. If the amended version of § 715s is construed literally, it conflicts with the Mineral Leasing Act. And both because it is the later of two conflicting statutes and because it is the more specific of a specific and a general statute, the Wildlife Refuge Revenue Sharing Act should control the distribution of these oil and gas revenues. The appellant also argues that the Interior Department and the Comptroller General 1975 opinions interpreting the statutes are entitled to deference.

Alaska, on the other hand, argues that "minerals" in the Wildlife Refuge Revenue Sharing Act should be read restrictively so that the term applies only to mineral revenues on acquired refuge lands and not to those from reserve refuge lands. Alaska cites certain incidents in the legislative history of the 1964 amendments and claims they show that Congress did not intend that the addition of "minerals" would alter prior law. Alaska also urges (1) that the appellants' literal interpretation is contrary to the Interior Department's interpretation in practice from 1964 to 1975 when revenues were distributed according to the Mineral Leasing Act; (2) that in 1976 Congress reenacted the Alaska distribution section of the Mineral Leasing Act, without modification or comment, after 11 years of agency interpretation and at a time when clarification of the statute would otherwise have been sought, thereby showing congressional intent that the Mineral Leasing Act cover *all* reserved land; and (3) that a literal construction here causes potential interpretive difficulties with other statutes, chiefly the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, 48 U.S.C. Note preceding § 21, and the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1608.

DISCUSSION

The difficulty here results from the addition of but one word, the term "minerals," to a catalog list of revenue sources in 16 U.S.C. § 715s(a). The parties agree that this addition creates an apparent conflict between the two statutory provisions involved. The touchstone to the resolution of the conflict is to ascertain the intent of Congress: by the addition of the term "minerals" in 16 U.S.C. § 715s(a), what effect, if any, did Congress intend to have on the distribution of mineral revenues on reserved refuge lands under 16 U.S.C. § 715s(c) or 30 U.S.C. § 191?

Appellant Kenai, relying on *Caminetti* v. *United States*, 242 U.S. 470 (1917), argues that 16 U.S.C. § 715s is clear and unambiguous on its face and therefore that resort to legislative history or other extraneous sources is inappropriate. *See also United States* v. *Wilson*, 591 F.2d 546, 547 (9th Cir. 1979); *Adams* v. *Morton*, 581 F.2d 1314, 1320 (9th Cir. 1978), *cert. denied*, 440 U.S. 958 (1979). It is true that under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within its scope, if § 715s is read in isolation.

However, when a plain meaning reading of a statute brings that statute into conflict with another statute and disrupts a preexisting network of statutory provisions, it is appropriate to look to the legislative history for help in ascertaining congressional intent. *See Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 9-10 (1976); *Church of Scientology* v. *U.S. Department of Justice*, —— F.2d ——, Slip Op. 696, 700-02 (9th Cir. Nov. 8, 1979). *Cf. Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978); *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965) (ability of courts to adopt restricted meaning of word when usual meaning leads to

absurd results); *League to Save Lake Tahoe, Inc.* v. *Trounday*, 598 F.2d 1164, 1173 (9th Cir. 1979) (resort to legislative history proper when words of statute are not conclusive as to legislative intent); *Get Oil Out! Inc.* v. *Exxon Corp.*, 586 F.2d 726, 729 (9th Cir. 1978) (court obligated to construe federal statutes so that they are consistent with each other). This is especially true when the face of the statute gives no indication of a congressional intent to repeal existing legislation or of a purpose, the accomplishment of which might require superseding prior statutes.

Unfortunately, the legislative history of the 1964 amendments to 16 U.S.C. § 715s sheds no direct light on the issue here. The principal purpose of the 1964 amendments was to improve the distribution scheme for revenues from acquired refuge land, so that local authorities would more likely approve of federal acquisition of wildlife refuge land. *See* H.R. Rep. No. 1753, 88th Cong., 2d Sess., *reprinted in* [1964] *U.S. Code Cong. & Ad. News* 3265. Accordingly, the addition of "minerals" occurred without comment; and potential conflict with the Mineral Leasing Act went unremarked. Of course, the mere fact that Congress was silent when one would have expected comment does not necessarily mean that an alteration in revenues from mineral leases was not intended by Congress.[4] Similarly, details in other portions of the legislative history from which there can be consistently implied an assumption that the prior revenue distribution would not be altered, are not in themselves dispositive.[5]

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[4] *Cf. Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U.S. 4, 11 (1942) ("The search for significance in the silence of Congress is too often the pursuit of a mirage.").

[5] The district court discusses these incidents. 436 F.Supp. at 292. Alaska also relies on these incidents. However, those

Since a literal reading of § 715s creates apparently unanticipated and non-productive difficulties with other statutes and the legislative history of the statute does not resolve the issue, it is nearly impossible to determine with confidence what was Congress' intent in passing the 1964 amendments.[6]

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items of legislative history show, at most, only that Congress had no express awareness that the addition of "minerals" might alter prior law. It is too far a jump to conclude further that Congress positively intended no change. *But see* footnote 7 *infra*. These incidents of legislative history in themselves cannot be dispositive of the issue here because they are connected only tenuously to the question of the intended distribution scheme and cannot be read in effect as a statement of congressional intent.

[6] Ideally, in most situations where a statute has a potential for conflict with another prior statute, either the statute itself or the legislative history will contain enough indication of purpose and congressional intent that the matter can be resolved there. In fact, the question of the meaning of "minerals" in § 715s and its application to mineral lease revenues on reserve refuge land was before Congress in 1978. In the course of a major reworking of § 715s, it was proposed to clarify this question so that oil and gas revenues from refuge lands were to be governed by § 715s, and not by 30 U.S.C. § 191, at least from the date of the 1978 enactment. Finally, however, the Senate Committee on Environment and Public Works noted that the issue was currently being determined in the instant case and preferred to leave the statute in its original form, pending the outcome of this litigation. "The Committee believes it is inappropriate to legislate on this matter pending a determination by the court, and takes no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95-1174, 95th Cong., 2d Sess. 4, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* 5003, 5006. *See also Id.* at 8, *reprinted in* [1978] *U.S. Code Cong. & Ad. News* at 5009-10 (additional views).

The appellants urge us to find that the later Wildlife Refuge Revenue Sharing Act has repealed by implication the earlier Mineral Leasing Act as to revenues from refuge lands. Repeal by implication, however, is not favored; if possible, statutes should be read so as to give effect to each of them. *Morton* v. *Mancari*, 417 U.S. 535, 549-51 (1974); *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936); *United States* v. *Jones*, 607 F.2d 269, 272 (9th Cir. 1979); *United States* v. *Burnett*, 505 F.2d 815, 816 (9th Cir. 1974), *cert. denied*, 420 U.S. 966 (1975). This is the preferred course especially when, as here, the purpose and legislative history of the later act gives no clear foundation for an implied repeal.[7] There can be no implied repeal unless the intention of the legislative body to repeal is clear. *Morton* v. *Mancari*, *supra*; *United States* v. *Georgia-Pacific Co.*, 421 F.2d 92, 102 (9th Cir. 1970). If possible, we seek an interpretation of the later act which will harmonize it with the Mineral Leasing Act and cause least disruption to the other related statutes.

The stated purpose of the 1964 amendments to the Wildlife Refuge Revenue Sharing Act was to facilitate the acquisition of lands from local owners, with the approval of local governing authorities. The focus of attention, therefore, was the treatment under the Act of *acquired* lands. Accordingly, we hold that the 1964 addition of "minerals" to the Wildlife Refuge Revenue Sharing Act must be read to be applied only to acquired refuge lands and not to reserved refuge lands. This interpretation is warranted because to hold otherwise is to find an implied repeal when Congress has expressed no

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[7] The few items of legislative history which do exist, *see* footnote 5 *supra*, give support to the position that Congress did not clearly intend an implied repeal. But even without them, such intent would still be absent.

clear intent. It also harmonizes the operation of the two statutes and gives effect to both. Further, it avoids other potential conflicts with the Alaska Statehood Act and the Alaska Native Claims Settlement Act. This interpretation also draws support from the fact that the department construed the statute this way in practice between 1964 and 1975, which practice we are not wont to disregard as merely eleven years of inadvertent statutory construction by the agency.[8]

Because clear congressional intent to effect a repeal by implication has not been shown and because the interpretation of the two statutes adopted by the district court and by this court gives effect to both statutes, the judgment of the district court is affirmed.

Affirmed.

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[8] The department did change its interpretation in 1975. *See* page 3 *supra*. The appellants argue that the department's new interpretation is entitled to the customary deference shown to agency interpretations under *Udall* v. *Tallman*, 380 U.S. 1 (1965). They further argue that the most recent departmental interpretation is equally entitled to deference despite the fact that it is a change of position, citing *Andrus* v. *Sierra Club*, 99 S.Ct. 2335 (1979), and *Montana Power Co.* v. *Environmental Protection Agency*, 608 F.2d 334 (9th Cir. 1979). But in *Sierra Club*, the change of interpretation occurred in the context of a comprehensive change from advisory guidelines to mandatory regulations. And in *Montana Power*, the agency's changed interpretation of *its own regulations* was involved. Here we do not have even a change in an agency's regulations implementing a statute. Rather it is a case of the agency's interpretation of a single term in a statute. In this context the term is neither a term of art nor one whose interpretation requires that deference be shown to the expertise of those charged with administering the operation of the statute. *Cf. General Electric Co.* v. *Gilbert*, 429 U.S. 125, 142-43 (1976) (less deference to administrative guidelines when they conflict with earlier agency pronouncements).

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 77-3265, 78-1443

DC CV A-76-94, J-76-3 JAH

KENAI PENINSULA BOROUGH, Municipal Corp.,
Plaintiff/Cross-Complainant/Aplt.

vs.

STATE OF ALASKA,
Plaintiff/Appellee

vs.

CECIL D. ANDRUS, *Secretary of Interior, et al.,*
Defendant/Appellee

KENAI PENINSULA BOROUGH, Municipal Corp.,
Plaintiff/Cross-Complainant/Aple.

vs.

STATE OF ALASKA,
Plaintiff

vs.

CECIL D. ANDRUS, *Secretary of Interior, et al.,*
Defendants/Appellants

Appeal from the United States District Court
for the District of Alaska

(Anchorage & Juneau)

JUDGMENT

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska (Anchorage & Juneau) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Certified to be a true and correct copy of true copy filed in my office. Dated May 20, 1980

JoAnn Myres
Clerk

By /s/ Colleen Cannon
Deputy

[SEAL]

A True Copy
Attest 13 May 1980
Richard H. Deane
Clerk of Court

By: /s/ Oscar Tagle
Deputy Clerk

Filed and entered February 5, 1980

APPENDIX D

Title 16 United States Code

16 U.S.C. § 715s. Participation of States in revenues from National Wildlife Refuge System—Separate fund in United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System"

(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing measures set forth in subsection (a) of this section.

Payments to counties

(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System: *Provided*, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such public lands therein; and

(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, exclusive of any improvements to such areas made subsequent to Federal acquisition, such cost to be adjusted to represent current values as determined by the Secretary for the first full fiscal year after enactment of this Act and as redetermined by him at five-year intervals thereafter, or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall

consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive.

Limitation on amount; reduction of payments

(d) The payments under subsection (c) of this section to the counties in the United States for any one fiscal year shall not exceed the amount of net receipts in the fund for that fiscal year and, in case the net receipts are insufficient for a particular fiscal year to pay the aggregate amount of the payments for that fiscal year to the counties, the payment to each county shall be reduced proportionately.

Uses for surplus moneys

(e) Any moneys remaining in the fund after all payments are made for any fiscal year may be used by the Secretary thereafter for management of the System, including but not limited to the construction, improvement, repair, and alteration of buildings, roads, and other facilities, and for enforcement of the Migratory Bird Treaty Act, as amended.

Terms, conditions, and regulations for disposition of surplus products, grant of privileges, and execution of other activities resulting in collection of revenues

(f) The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States. Further, the Secretary may dispose of such surplus animals by exchange of the same or other kinds, gift or loan to public institutions for exhibition

or propagation purposes and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife in accordance with such regulations as he may prescribe.

Supersedure and repeal of other provisions

(g) Beginning with the first day of the next full fiscal year hereafter, the provisions of this Act shall supersede and repeal the provisions of the paragraph entitled "Management of National Wildlife Refuges" in the General Appropriation Act, 1951, approved September 6, 1950 (64 Stat. 595, 693-694).

June 15, 1935, c. 261, Title IV, § 401, 49 Stat. 383; 1939 Reorg.Plan No. II, § 4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; 1940 Reorg.Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Oct. 31, 1951, c. 654, § 2(13), 65 Stat. 707; Aug. 30, 1964, Pub.L. 88-523, 78 Stat. 701; Oct. 15, 1966, Pub.L. 89-669, § 8(b), 80 Stat. 930; Dec. 28, 1973, Pub.L. 93-205, § 13(b), 87 Stat. 902.

16 U.S.C. § 715s (1974 and 1976 amendments). Participation of local government in revenue from areas administered by the United States Fish and Wildlife Service—Separate fund in United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System"

(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established,

during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife mangement areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing and revenue-sharing measures of this section.

Payments to counties

(c) (1) The Secretary shall pay out of the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any fee area whichever of the following amounts is greater:

(A) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within such county.

(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county.

(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount of each such county is entitled to shall be the amount which bears to such 25 per centum the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided*, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(3) For purposes of this section, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands shall each be treated as a county.

(4) (A) For purposes of determining the fair market value of fee areas under paragraph (1) (B), the Secretary shall—

(i) appraise before September 30, 1979, all fee areas for which payments under this section were not authorized for fiscal years occurring before October 1, 1977; and

(ii) appraise all other fee areas, within five years after October 17, 1978, in the order in which such areas were first established by the Service.

After initial appraisal under clause (i) or (ii), each fee area shall thereafter be reappraised by the Secretary at least once during each five-year period occurring after the date of the initial appraisal. Until any fee area referred to in clause (ii) is initially appraised under this subparagraph, the fair market value of such area shall be deemed to be that adjusted cost of the area which was used to determine payments under this subsection for fiscal year 1977; and in no case may the amount of any payment to any local government under paragraph (1) (B) with respect to any fee area be less than the amount paid under paragraph (2) (A) of this subsection (as in effect on September 30, 1977) with respect to such area.

(B) The Secretary shall make the determinations required under this subsection in such manner as the Secretary considers to be equitable and in the public interest. All such determinations shall be final and conclusive.

(5) (A) Each county which receives payments under paragraphs (1) and (2) with respect to any fee area or reserve area shall distribute, under guidelines established by the Secretary, such payments on a proportional basis to those units of local government (including, but not limited to, school districts and the county itself in appropriate cases) which have incurred the loss or reduction of real property tax revenues by reason of the existence of such area. In any case in which a unit of local government other than the county acts as the collecting and distributing agency for real property taxes, the payments under paragraphs (1) and (2) shall be made to such other unit which shall distribute the payments in accordance with the guidelines.

(B) The Secretary may prescribe regulations under which payments under this paragraph may be made to units of local government in cases in which subparagraph (A) will not effect the purposes of this paragraph.

(C) Payments received by units of local government under this subsection may be used by such units for any governmental purpose.

Authorization of appropriations equal to difference between amount of net receipts and aggregate amount of required payments

(d) If the net receipts in the fund which are attributable to revenue collections for any fiscal year do not equal the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, there are authorized to be appropriated to the fund an amount equal to the difference between the total amount of net receipts and such aggregate amount of payments.

Transfer and use of excess of net receipts over aggregate amount of required payments

(e) If the net receipts in the fund which are attributable to revenue collections for any fiscal year exceed the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, the amount of such excess shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges under the provisions of the Migratory Bird Conservation Act.

Terms, conditions and regulations for execution of revenue producing activities; disposal of animals

(f) The Secretary shall carry out any revenue producing activity referred to in subsection (a) (1), (2),

and (3) of this section within any fee area or reserve area subject to such terms, conditions, or regulations, including sales in the open markets, as the Secretary determines to be in the best interest of the United States. The Secretary may, in accordance with such regulations as the Secretary may prescribe, dispose of animals which are surplus as any such area by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propogation purposes, and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife.

Definitions

(g) As used in this section—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Administration of payments to local governments for entitlement lands; reserved areas as entitlement lands; payments as payments under specified provisions

(h) In administering sections 1601 and 1607 of Title 31, for fiscal years occurring after September 30, 1978—

(1) reserve areas shall be deemed to be entitlement lands for purposes of section 1606(a) of Title 31; and

(2) payments received by any unit of local government pursuant to subsection (c)(2) of this section shall be deemed to be payments under a provision of law specified in section 1604 of Title 31.

As amended Dec. 3, 1974, Pub. L. 93-509, § 4, 88 Stat. 1603; Oct. 17, 1978, Pub. L. 95-469, § 1(a), 92 Stat. 1319.

Title 30 United States Code

30 U.S.C. § 181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own

any interest in any lease acquired under the provisions of this chapter.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this chapter, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

Feb. 25, 1920, c. 85, § 1, 41 Stat. 437; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, c. 916, § 1, 60 Stat. 950; Sept. 2, 1960, Pub. L. 86-705, § 7(a), 74 Stat. 790.

30 U.S.C. § 191. Disposition of moneys received

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter from lands within the naval petroleum reserves shall be de-

posited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter not otherwise disposed of by this section shall be credited to miscellaneous receipts.

Feb. 25, 1920, c. 85, § 35, 41 Stat. 450; May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub. L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351.

30 U.S.C. § 191. Disposition of moneys received (1976 Amendments)

All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum there-

of shall be paid to the State of Alaska for disposition by the legislature thereof; *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.

As amended Apr. 21, 1976, Pub. L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub. L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub. L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub. L. 94-579, Title III, § 317(a), 90 Stat. 2770.